



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2022-0303

RIN 1625-AA09

Drawbridge Operation Regulation; Trail Creek, Michigan City, IN

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Amtrak Railroad Bridge, mil 0.9, across Trail Creek, in Michigan City, Indiana, to allow it to operate remotely. The bridge has operated remotely since 2003 without inclusion in the CFR. During that period, the Coast Guard has not received any reports of incident or public complaint.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number (USCG-2022-0303) in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IGLD85	International Great Lakes Datum of 1985
Left	As viewed from the mouth of the river
LWD	Low Water Datum Based on IGLD85
NPRM	Notice of Proposed Rulemaking
OMB	Office of Management and Budget
Right	As viewed from the mouth of the river
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 25, 2022, the Coast Guard published a NPRM entitled “Drawbridge Operation Regulation: Trail Creek, Michigan City, IN” in the Federal Register (87 FR 31794). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended on July 25, 2022, we received one comment unrelated to this rulemaking.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Amtrak Railroad Bridge, mile 0.9, over Trail Creek, in Michigan City, Indiana, was authorized to operate remotely by letter during the United States Coast Guard’s transition from the Department of Transportation to the Department of Homeland Security. Inclusion of the Amtrak Railroad Bridge, mile 0.9, into the regulations was overlooked and this proposed rule will correct that oversight. Further, the Coast Guard was able to use the rulemaking process as a means to provide the public the opportunity to comment on the bridge operations.

Trail Creek is 7.3 miles long and used by small powered and unpowered recreational vessels, commercial passenger vessels, and fishing vessels. Freighters have not utilized the waterway for several years. The Amtrak Railroad Bridge, mile 0.9, over Trail Creek is a swing railroad bridge and provides a horizontal clearance of 41 feet in the right draw and 44 feet in the left draw and a vertical clearance of 7 feet above LWD in

the closed position and an unlimited vertical clearance in the open position. Each day during the summer, approximately 35 recreational and commercial fishing vessels transit the Amtrak Railroad Bridge, mile 0.9; most of the 35 vessels make daily roundtrips, transiting the bridge two times each day.

IV. Discussion of Comments, Changes, and the Final Rule.

We did not receive any comments concerning the proposed regulatory language from the NPRM so the proposed language will be published in this FR without change.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge without change to the operating schedule of the bridge. The remote operations equipment acts as if a drawtender is present with the ability to receive all signals.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard did not receive any comments from the Small Business Administration on this rule.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V. A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

During the NPRM comment period, we did not receive any comments concerning this bridge and we do not intend to make changes from the proposed language to the final rulemaking.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. During the NPRM comment period that lasted 60-days we did not receive any comments.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental

Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. In § 117.401 Trail Creek, revise paragraph (b) to read as follows:

§ 117.401 Trail Creek.

* * * * *

(b) The draw of the Amtrak Railroad Bridge, mile 0.9, at Michigan City shall open on signal, except from December 1 through March 15 the draw shall open if at least 12-hours advance notice is given. The bridge is authorized to be operated remotely. The bridge shall operate and maintain a VHF-FM Marine Radio.

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Dated: May 1, 2023.

E.J. DOUCETTE

Captain, U.S. Coast Guard,

Acting Commander, Ninth Coast Guard District

[FR Doc. 2023-09574 Filed: 5/4/2023 8:45 am; Publication Date: 5/5/2023]